

Decision 01-07-030 July 12, 2001

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the  
Commission's Own Motion to Establish  
Consumer Rights and Consumer Protection Rules  
Applicable to All Telecommunications Utilities.

Rulemaking 00-02-004  
(Filed February 3, 2000)

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**INTERIM OPINION  
ADOPTING INTERIM RULES GOVERNING THE INCLUSION OF  
NONCOMMUNICATIONS-RELATED CHARGES  
IN TELEPHONE BILLS**

**I. Summary**

This decision adopts interim rules governing the inclusion of non-communications-related charges on telephone bills. Effective July 1, 2001, billing telephone companies are permitted to include non-communications charges on subscribers' telephone bills, subject to consumer protection rules adopted by the Commission. (Public Utilities Code Section 2890, version effective July 1, 2001.)<sup>1</sup> Although recent anti-cramming legislation codified at Sections 2889.9 and 2890 contains many applicable consumer protection provisions, the Legislature has directed the Commission to adopt by July 1, 2001, "any additional rules it determines to be necessary to implement the billing safeguards of Section 2890, for the inclusion of non-communications-related products and services in telephone bills." (Section 2890.1) The interim rules set forth in Appendix A to this decision contain safeguards the Commission deems necessary, at this time, to ensure that subscribers are billed only for charges they have authorized.

The Commission is preparing new, comprehensive consumer protection rules that it will issue in the form of a General Order later in this proceeding. Today's interim rules, possibly with some modifications, will be incorporated into and superseded by that General Order.

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<sup>1</sup> Added by SB 378 (Stats. 1998, Ch. 1041), as amended by AB 1658 (Stats. 1999, Ch. 1005) and AB 994 (Stats. 2000, Ch. 931). All statutory citations are to the Public Utilities Code unless otherwise specified.

## **II. Background**

Cramming, the submission or the inclusion of unauthorized, misleading, or deceptive charges for products or services on the subscriber's telephone bills, has become a serious and widespread problem in California in recent years, draining time and money from California consumers and businesses.<sup>2</sup> In an effort to address the problem, the Legislature enacted Sections 2889.9 and 2890, which contain many provisions designed to deter cramming, and, in addition, authorize the Commission to adopt rules needed to accomplish the consumer protection purpose of those statutes.

Section 2890, however, was amended effective July 1, 2001 to permit the use of telephone bills to bill for non-communications charges, subject to Commission rules. AB 994 extended Section 2890's ban on non-communications-related charges from January 1, 2001 to July 1, 2001, in order to allow the Commission more time to develop appropriate safeguards. Fashioning effective safeguards presents a challenge because, as the Federal Communications Commission (FCC) has noted,

. . . it is significantly easier to bill fraudulent charges on telephone bills than on credit card bills. While credit card charges require access to a customer account number that consumers understand should be treated as confidential, all that is often required to get a charge billed on a local telephone number is the consumer's telephone number. This number is not only expected to be widely distributed, but can easily be

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<sup>2</sup> In addition to the findings of the California Legislature in enacting Sections 2889.9 and 2890, see Investigation of Coral Communications, D.01-04-035 (April 19, 2001); Investigation of USP&C, D.01-04-036 (April 19, 2001); see also the Federal Communications Commission's orders in its Truth-In-Billing proceeding, CC-98-170, including its Order on Reconsideration, FCC 00-111 (Mar. 29, 2000).

captured by an entity even when the consumer has not authorized charges or made a purchase. (*Truth-In-Billing*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, 14 FCC Rcd. 7492 (1999), ¶ 7, fn. 18.)

Because the harm that can result from misuse of confidential information is great – ranging from intrusive telemarketing to identity theft and other types of fraud – it is essential that subscribers retain control of the confidential information they provide to telephone companies in order to obtain service, and that this information not be used for other purposes without their consent. The privacy protections provided by Section 2891, which requires telephone companies, among other things, to obtain the written consent of residential customers before releasing their confidential information to any other person or corporation, are therefore an important component of the consumer protection rules we adopt today.

On January 3, 2001, Assigned Commissioner Carl Wood issued a ruling in this proceeding requesting comment on a first draft of proposed rules governing non-communications charges. Many carriers and consumer groups submitted comments and reply comments. The Attorney General and the California Small Business Association also submitted comments containing suggestions for supplementing and clarifying the proposed rules. Substantially revised rules were mailed out for comment on June 1, 2001. The draft rules were revised further in response to written comments and as a result of further study.

Several parties suggested that the Commission reevaluate the rules after they have been in effect for approximately 18 months. The Commission agrees that it would be useful after about that length of time to evaluate the initial experience with non-communications charges on telephone bills, assess how

effective these rules have been in protecting consumers, and consider whether changes to the rules and/or legislative changes are needed.

### **III. Authority for Rules**

The Commission's authority to adopt these consumer protection rules derives in part from its general authority to regulate public utilities (see, *inter alia*, Section 701). Additional specific authority is found in Sections 2889.9, 2890, 2890.1, 2891, and 2896-2897.

#### **A. Billing Agents and Vendors that are not Public Utilities**

Although cramming does not necessarily involve multiple entities, experience has shown that it often occurs in the context of a billing chain involving one or more billing agents in addition to the billing telephone company and yet another entity responsible for initiating the process of placing a charge on a subscriber's bill. For this reason, the Legislature in enacting Sections 2889.9 and 2890 made the requirements of those sections applicable to billing agents and to other persons or corporations "responsible for generating a charge" on a subscriber's telephone bill, whether or not they are public utilities. Commission rules implementing this anti-cramming legislation apply to these entities as well. If persons or corporations subject to Sections 2889.9 or 2890 fail to comply with those statutes or the Commission's implementing rules, the Commission may impose penalties on them. (Section 2889.9(b).)

The term "entity responsible for generating a charge" in Section 2890 refers to a person, corporation, or other business entity that initiates the process of getting a charge placed on a subscriber's telephone bill. Some carriers, however, have argued in comments that the phrase is ambiguous because billing agents also play a role in "generating a charge" on a subscriber's bill.

Accordingly, in these rules, we have used the term “vendor” to refer to a person or corporation that initiates the process of placing a non-communications charge on a subscriber’s telephone bill. In the context of non-communications charges, vendors likely will not be public utilities in most cases; however, if a billing telephone company sells non-communications products or services directly to its own subscribers, it will be acting both as a billing telephone company and as a “vendor” within the meaning of these rules.

### **B. Wireless Telephone Service Providers**

Wireless telephone service providers that choose to provide billing services for non-communications products and services are subject to these rules. Although Section 332(c)(3)(A) of the Federal Communications Act bars states from regulating wireless telephone rates unless specific authorization is obtained from the FCC, it allows states to “regulate the other terms and conditions of service.” The Act also does not prevent states from requiring wireless service providers to comply with general consumer protection laws. (Spielhotz v. Superior Court (2001) 86 CA4th 1366; see also In re Wireless Consumers Alliance, Inc., FCC 00-292 (Aug. 14, 2000), reconsideration denied, FCC 01-35 (Jan. 31, 2001).) Wireless telephone service providers providing telephone service in California are “telephone corporations” as defined by the Public Utilities Code and are generally subject to the statutory provisions underlying the rules we adopt today.

Wireless customers, like land line customers, should be protected from unauthorized charges. They, too, need non-misleading information about their service options, protection of their confidential information, and a procedure for resolving billing errors. Complaints to the Commission related to wireless service are increasing: 3787 in 1999, 5243 in 2000, and 3486 in the first half of

2001. Most of these complaints are billing disputes.<sup>3</sup> And as the Attorney General noted in his first set of comments on the Order Institution Rulemaking and first draft of the Telephone Consumers' Bill of Rights, "[I]t is well established that only a tiny portion of persons who believe they have a complaint about a business complain to a third party, such as a government agency or the Better Business Bureau. *See, e.g.,* Best, Arthur, When Consumers Complain, Columbia University Press, (1981), p. 118." And although the existence of competition among wireless service providers means that at least some subscribers have the option of switching to a different provider if dissatisfied with the service they are getting, long-term contracts and substantial fees for early termination of those contracts discourage customers from doing so.

It is becoming clear that the existence of competition among wireless providers does not obviate the need for consumer protections for wireless customers.

#### **IV. Applicability of Truth in Lending Act**

Opening up telephone bills to non-communications charges raises the question whether this new billing service will be subject to general consumer protection laws governing credit and billing, particularly, the federal Truth in Lending Act<sup>4</sup> and its implementing regulation, the Federal Reserve Board's Regulation Z. Regulation Z contains the rules governing credit card transactions and billing that are relatively well known to consumers. Extensions of credit that

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<sup>3</sup> Numbers of informal complaints to the Consumer Affairs Branch related to wireless service. These numbers do not include formal complaints.

<sup>4</sup> 15 U.S.C. § 1601.



“involve public utility services” where the “charges for service, delayed payment, or any discounts for prompt payment are filed with or regulated by a governmental unit” are exempt from Regulation Z. (See 12 C.F.R. 226.3(c).) Most, if not all, non-communications services that may be charged to telephone bills under the version of Section 2890 that goes into effect July 1, 2001, clearly will not fall under this exemption.

As an example of how Truth in Lending may apply to billing for non-communications charges, a business offering or extending credit falls under Regulation Z’s scope when:

1. The credit is offered or extended to consumers,
2. The offering or extension of credit is done regularly,
3. The credit is subject to a finance charge or is payable by a written agreement in more than four installments, and
4. The credit is primarily for personal, family, or household purposes.<sup>5</sup>

Thus, it appears that if billing telephone companies impose a finance charge in connection with billing for non-communications charges unrelated to telephone service, in effect the billing service will constitute an offer or extension of consumer credit that is subject to Regulation Z. (See 12 C.F.R. § 226.1(c).) “Finance charges” are broadly defined under Regulation Z.<sup>6</sup>

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<sup>5</sup> See 12 C.F.R. § 226.1(c).

<sup>6</sup> Regulation Z defines a finance charge as “the cost of consumer credit as a dollar amount” and includes “any charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit.” (See 12 C.F.R. § 226.4(a).)

The assigned Commissioner, in his January 3, 2001, ruling inviting comment on the first draft of these rules, invited billing telephone companies to state whether they intended to impose finance charges. No carrier gave a definitive response. Lacking information on this point, it would be irresponsible for the Commission to assume that no billing telephone company will impose finance charges as that term is defined for purposes of the Truth in Lending Act. The Commission must consider the possibility that some billing telephone companies may impose finance charges and that their billings for non-communications charges may be subject to the Truth in Lending Act and Regulation Z, as well as parallel state laws.

State regulations governing creditor disclosure requirements and billing complaint procedures must be consistent with Regulation Z. (See § 226.28.) Consequently, the Commission's rules governing non-communications charges must be consistent with Regulation Z, given the possibility, if not likelihood, that at least some non-communications billing will be subject to that body of law. Clearly, having two distinct sets of rules, one consistent with Truth in Lending, one not, is not workable or desirable. Accordingly, our intent in drafting these rules is to make them consistent with the Truth in Lending Act. We have focused primarily on the areas of disclosure requirements, complaint procedures, and rules that enable the customer to alert the billing telephone company to any unauthorized use of the subscriber's account, and to revoke authorization to use the account for billing non-communication charges. Billing telephone companies must bear in mind, however, that they are responsible for complying with all applicable legal requirements under federal and state law,

not just those requirements set forth in our rules.<sup>7</sup> As many parties have commented, there are other good reasons to pattern these rules after the Truth in Lending Act and Regulation Z. (See, inter alia, Comments of the California Attorney General, the California Department of Consumer Affairs, California Small Business Association, and TURN.) The federal rules governing credit card transactions and credit card billing disputes are relatively well known to consumers and to businesses. They have been tested, and they apply nationwide. They include disclosure requirements that enable consumers to verify charges on their bills, and provide a workable procedure to get unauthorized charges removed and other errors corrected. California consumers who opt to open up their telephone bills to non-communications charges will be well served by these safeguards.

#### **V. Basic Approach: Deterrence Through Accountability**

These interim rules, if implemented consistently, should block most cramming attempts before subscribers are harmed. If crams do occur, the rules provide a relatively simple, fair, and effective process for getting unauthorized charges removed and other billing errors corrected.

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<sup>7</sup> While our objective in drafting these rules is to make them consistent with the Truth in Lending Act, to the extent these rules provide any greater protections than those provided by the Act, we believe these protections are consistent with and therefore not preempted by the Act.

Another consumer protection law that it appears will apply to the billing and collection activity of any telephone corporation that bills for non-communications charges is the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.17.

Some carriers, particularly wireless carriers, in their comments on the first draft of these rules, argued that the Commission should abstain from adopting any rules on non-communications charges until after it has seen what problems develop. This in essence is a recommendation to “wait and see what fraud happens,” an approach we reject as irresponsible.

The Legislature has directed the Commission to adopt billing safeguards *before* telephone bills are opened up to non-communications products and services, and for good reason. The Commission continues to receive many complaints involving slamming, cramming, billing errors on telephone bills, misleading advertising, undisclosed charges, change of terms and conditions without notice, etc. Hundreds of consumers spoke at public participation hearings last summer of long and frustrating hours spent trying to correct crams, slams, and billing errors, of carriers that did not terminate service and billing despite repeated requests, and of loss of telephone service and damaged credit stemming from unresolved billing problems. Hundreds more consumers described similar problems in letters and electronic messages to the Commission, and urged the Commission to adopt effective safeguards. And as the Attorney General has argued persuasively in his opening and reply comments to the first draft of these rules, opening up telephone bills to non-communications charges without effective safeguards in place would place telephone subscribers at an increased risk of falling victim to fraud crimes such as credit card fraud, e-commerce fraud, and credit identity theft, which currently pose challenges for law enforcement agencies. After-the-fact enforcement actions address only a fraction of the abuses suffered by consumers and even in those cases, imperfect remedies and fly-by-night operators often make it impossible to make the victims

whole. These realities impose an obligation on the Commission to devise rules that prevent harm to consumers.

To achieve the goal of deterring cramming, the various participants in the billing chain must be held accountable for their part in the billing process. Experience has shown that crammers have succeeded in defrauding consumers in part because they have been able to hide behind billing agents and billing telephone companies that disclaim responsibility for the charges placed on subscribers' phone bills, on the ground that another entity generated those charges. Many members of the public who have appeared before us view this stance as "passing the buck," with good reason. The interim rules on non-communications charges require billing agents and billing telephone companies to take responsibility for their actions. Responsible practices by the billing telephone companies, in particular, can prevent most cramming. For example, the interim rules require billing telephone companies to screen the companies they bill for, and to advise those entities that they will be required to provide proof of authorization whenever a subscriber disputes a charge.

## **VI. Key Issues**

### **A. Protection for Consumers and Businesses**

These interim rules protect individual consumers and businesses alike. Although the Commission receives complaints primarily from individuals, businesses also have been victims of cramming. (See, e.g., Comments of California Small Business Association.) Extending the protection provided by these rules to businesses in California will benefit those businesses and further discourage the practice of cramming in this state.

## **B. Role of Billing Telephone Company**

As discussed above, responsible billing telephone company practices are a crucial component of effective safeguards. These interim rules require billing telephone companies that choose to provide billing services to vendors of non-communications products and services to adopt certain practices, such as screening the vendors that bill through them directly or indirectly through billing agents, and requiring them to provide proof of authorization for all disputed charges. These practices and others set forth in the interim rules will effectively deter most cramming.

## **C. Authorization of Charges**

### **1. Billing Telephone Companies Must Obtain Affirmative Consent from a Subscriber before Opening Up that Subscriber's Telephone Bill to Non-Communications Charges (the "Opt-in" Requirement)**

Because billing for non-communications charges on telephone bills has been prohibited by statute, many subscribers initially will be unaware that as a result of a change in the law, they are now exposed to a risk of having unauthorized charges for non-communications products and services placed in their telephone bills. Consumers should not be exposed to this risk unknowingly. Accordingly, these interim rules require billing telephone companies to obtain express permission directly from a subscriber to include non-communications-related charges before any non-communications-related charges may be included on that subscriber's bill. Although some carriers objected to this requirement as onerous and unnecessary, we believe this "opt-in" approach constitutes a necessary safeguard at this time. It enables the billing telephone company to block all non-communications charges on the bills of subscribers who do not want to use their telephone bill for anything but their

telephone service, greatly reducing the risk of fraudulent authorizations. The “opt-in” authorization need only be obtained once for each subscriber, unless a subscriber subsequently revokes authorization.

**Options for limited authorization:**

Our June 1 draft required billing telephone companies to offer subscribers certain options for placing limits on their authorization, for example to certain vendors and to a certain dollar amount per month. Consumer groups and the Attorney General support these options but carriers, in general, opposed them on the ground that their billing systems are not flexible enough to allow these options. The Commission will not, at this time, require billing telephone companies to provide subscribers with these options, but it encourages billing telephone companies to explore means of providing them. The Commission notes that Section 2890 requires telephone companies to separate charges on the bill by provider. As this provision must be complied with, we believe it is also feasible, perhaps without significant additional cost, to provide customers with the option of allowing charges only by certain providers. We believe that allowing customers to place a dollar limit per month on their accounts is feasible too, because telephone companies currently place dollar limits on the accounts of customers with poor credit histories. We intend to revisit this issue after the rules have been in effect for a while.

**2. Charges Must Be Authorized By Subscriber at Point of Sale**

The need to ensure that only properly authorized charges are included in subscribers’ bills is non-controversial; however, parties differ on how the Commission should address that problem in its rules. Many carriers, in their comments to the first version of these rules, urged the Commission to refrain

from imposing a particular method, such as use of a PIN number, because other security procedures are being developed that might be preferable. The interim rules require use of an authorization verification procedure at least as effective as a PIN number, but allow flexibility in the choice of a procedure. Billing telephone companies should require that the entities they bill for use security procedures consistent with this standard, and promptly suspend billing services for them if they do not.

### **3. Subscribers May Revoke Their Authorization**

The rules enable subscribers to revoke consent to allow non-communications charges on their telephone bills at any time without charge. As with credit cards, this provision is necessary to protect consumers in the event of loss or theft of a cell phone, and any unauthorized use of their account.

### **D. Privacy Protections**

California has a substantial state interest in protecting telephone subscribers from becoming the victims of fraud, including identity theft, and unwanted telephone solicitations. California residents' "right to private communications" has been codified at Section 2891, which provides, with specified exceptions, that no telephone corporation shall make available to any other person or corporation a residential subscriber's personal financial information without the subscriber's written consent.

Failure to keep confidential personal financial information confidential can result in significant harm to individuals. Ineffective protection of confidential financial information may encourage identity theft, which in turn may result in severe damage to the credit record of the victim, and may require



victims to spend days establishing that they are not responsible for debts incurred in their names.<sup>8</sup> And dozens of California residents, in public hearings held last summer in this proceeding, expressed outrage at being subjected to intrusive telemarketing at home, and great frustration at being unable to prevent these intrusions.

To help subscribers avoid these invasions of their privacy, subscriber's confidential information, including financial information, should not be released to a third party without the subscriber's written consent. When the Legislature enacted Section 2891, it determined that consent should be required in writing to ensure that subscribers were adequately informed of the terms and conditions of any release to which they were agreeing before they gave their consent.<sup>9</sup> Our rules are consistent with this requirement.

#### **E. No Disconnection Rule**

The interim rules prohibit disconnecting, or threatening to disconnect, basic local telephone service for nonpayment of non-communications charges. This rule is consistent with the no-disconnect policy we announced in D.00-03-020 (as modified by D.00-11-015), which prohibits disconnection of basic local service for nonpayment of interexchange service.

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<sup>8</sup> The Los Angeles County Sheriff's department reports that the 1,932 identity theft cases it received in 2000 constitute a 108% increase over the total for the preceding year. The Los Angeles Police Department states that it receives 150 to 200 identity theft cases each month, and that of these cases less than 1 percent have been solved. See Cal. Senate Rules Committee, *SB 168 Senate Bill Analysis: Third Reading*, at 5 (Cal. 2001), at [http://www.leginfo.ca.gov/pub/bill/sen/sb\\_0151-0200/sb\\_168\\_cfa\\_20010423\\_162446\\_sen\\_floor.html](http://www.leginfo.ca.gov/pub/bill/sen/sb_0151-0200/sb_168_cfa_20010423_162446_sen_floor.html).

<sup>9</sup> Cal. Pub. Util. Code 2891(a).

## **VII. Complaint Procedures**

The rules set forth a procedure that enables subscribers to resolve cramming problems by contacting the billing telephone company that issued the bill. This approach, which was recommended by some of the parties who commented on the first draft of these rules, is similar to the procedures for resolving questions about credit card charges set forth in Regulation Z (implementing the Truth in Lending Act, discussed above), which are familiar to many consumers.

In response to comments on the June 1<sup>st</sup> draft and upon further review of the requirements set forth Sections 2889.9 and 2890, we have modified the complaint procedures to allow billing telephone companies to refer some complaints to the “entity responsible for generating the charge.” If it does, the billing telephone company must require of that entity that the dispute resolution service of that entity meet the requirements set forth in Sections 2889.9 and 2890. (See Section 2890(d)(1).) Subscribers must also be informed that they can return to the billing telephone company if they cannot get the problem resolved with the vendor. Billing telephone companies, however, retain ultimate responsibility for handling customer complaints of billing errors. (See Section 2890(d).) The billing telephone company also has an obligation to keep records of complaints of billing errors, for monitoring and enforcement purposes. To dispute an unauthorized charge, a subscriber may call the billing telephone company, which will attempt to verify authorization. If the billing telephone company is unable to obtain verification that the charge was properly authorized from the vendor or billing agent that submitted the charge, the billing telephone company will be required to credit the charge to the subscriber. Pending verification of a disputed charge, a subscriber is not required to pay that charge, and the billing telephone

company may not report the unpaid charge as delinquent to credit reporting agencies, or send the charge to collection. The same rules apply if the billing telephone company refers the customer to the customer service of the vendor or billing agent to have the complaint addressed.

These complaint procedures should help deter cramming by making it unprofitable. If billing telephone companies withhold payment for unauthorized charges, most cramming will disappear. Telephone consumers will suffer less harm and billing telephone companies will receive fewer complaints.

Subscribers dissatisfied with the billing telephone company's resolution of their complaint may file an informal complaint with the Commission's Consumer Affairs Branch, which will contact the billing telephone company and attempt to resolve the complaint informally.

Following formal adjudicatory proceedings, which may be initiated by a formal complaint or on the Commission's own motion pursuant to the Commission's existing Rules of Practice and Procedure, the Commission may impose penalties on billing telephone companies, billing agents, or vendors that have violated the provisions of Sections 2889.9 and 2890 or the Commission's implementing rules. (See Section 2889.9(b).)

## **VIII. Conclusion**

These interim rules, properly implemented, contain the safeguards necessary to protect California telephone subscribers from unauthorized non-communications charges on their telephone bills.

## **IX. Need for Hearings**

The Commission has determined that no hearings are necessary prior to the adoption of the interim rules.

## **X. Comments on Draft Decision**

The draft decision of the assigned Commissioner was mailed to the parties on the service list for public review and comment on June 1, 2001. Any comments were required to be filed by June 20, 2001; reply comments were not permitted.<sup>10</sup> Comments were filed by AT&T Communications of California, AT&T Wireless Services of California, Cellular Carriers Association of California, Cingular Wireless, Cox Communications, Pacific Bell, Qwest, Verizon California, Verizon Wireless, Working Assets Funding Service, Inc., the Attorney General of California, California Small Business Roundtable/California Small Business Association, California Department of Consumer Affairs, Greenlining Institute/Latino Issues Forum, ORA, and TURN.<sup>11</sup>

We have carefully considered all of the comments, and significant changes in response to them have been made to the rules governing authorization, revocation of authorization, billing format requirements, and complaint procedures, as well as to some of the definitions.

## **Findings of Fact**

1. Effective July 1, 2001, Public Utilities Code Section 2890's prohibition against including non-communications-related charges on subscribers' telephone bills ended.

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<sup>10</sup> The normal 30-day comment period was reduced pursuant to Rule 77.7(f)(9) based on Section 2891.1's requirement that the Commission adopt consumer protection rules governing non-communications charges by July 1, 2001, and the fact that the revised rules mailed on June 1, 2001 had been rewritten after considering the parties' previous round of comment and reply comment.

<sup>11</sup> The motion by the California Department of Consumer Affairs to file comments one day late is granted.

2. In AB 994, the Legislature directed the Commission to issue consumer protection rules to protect telephone subscribers from the additional risks inherent in opening up telephone bills to non-communications-related charges.

3. Unauthorized charges on telephone bills, known as “cramming,” and other types of billing errors, have become a serious and widespread problem in recent years, for all classes of carriers.

4. The Commission’s Consumer Affairs Branch received 3787 informal complaints related to wireless telephone service and billing in 1999, 5243 in 2000, and at least 3486 in the first half of 2001. Most of these complaints are billing disputes.

5. Thousands of telephone subscribers have complained to the Commission that their efforts to get unauthorized charges removed from their telephone bills or to have other types of billing errors corrected have been frustrating and time-consuming.

6. Opening up telephone bills to non-communications-related charges greatly increases the risk to subscribers of having unauthorized charges placed on their telephone bills.

7. “Credit identity theft,” the use of a consumer’s personal identification and credit information and the thief’s use of this information to obtain money, credit, goods, services, and other things of value in the victim’s name, is also a growing consumer problem in California.

8. Requiring subscribers’ informed consent to the release of confidential subscriber information by telephone companies will help to deter identity theft and other violations of subscribers’ privacy rights.

9. At this time, the Commission does not know what security procedures most billing telephone companies intend to use to ensure that only authorized charges are included on the telephone bills they issue to subscribers.

10. Effective safeguards are needed to ensure that only charges authorized by telephone subscribers are included in telephone bills.

11. Because many consumers initially will be unaware that effective July 1, 2001, non-communications-related charges could be included in their telephone bills, billing telephone companies should be required to obtain subscribers' affirmative consent before opening up their telephone bills to non-communications charges.

12. At this time, the Commission does not know whether billing telephone companies will impose "finance charges" as defined by the federal Truth in Lending Act, in connection with non-communications-related charges.

13. The public interest in adopting rules governing non-communications related charges on telephone bills on or before July 1, 2001 outweighs the public interest in a full 30-day public review and comment on the draft decision and interim rules.

14. This Interim Order should be made effective immediately to begin protecting California telephone subscribers from unauthorized non-communications charges on their telephone bills.

### **Conclusions of Law**

1. The primary purpose of Public Utilities Code Sections 2889.9 and 2890 is to deter cramming.

2. Public Utilities Code Sections 2889.9 and 2890 authorize the Commission to issue rules to safeguard the rights of telephone consumers with respect to their

telephone bills, specifically, to deter cramming and to provide meaningful and effective remedies.

3. The Commission has jurisdiction, pursuant to Public Utilities Code Section 2889.9(b), to require telephone corporations operating in California and, in addition, billing agents and other persons or corporations that are not public utilities but that are responsible for generating charges ultimately placed on the telephone bills of California subscribers, to comply with the requirements of Sections 2889.9 and 2890, and with the Commission's implementing rules, in order to effectuate the consumer protection purposes of those statutes.

4. The Commission has jurisdiction to require wireless telephone service providers operating in California to comply with its consumer protection rules.

5. Effective July 1, 2001, Section 2890's prohibition on the inclusion on non-communication-related charges on telephone bills expired.

6. Public Utilities Code Section 2890.1 directs the Commission to adopt by July 1, 2001, any additional rules it determines are necessary to implement the billing safeguards of Section 2890 with respect to non-communications related charges.

7. To the extent billing telephone companies impose finance charges in connection with charges unrelated to telephone service, the underlying transactions and the billing for those transactions will be subject to the federal Truth in Lending Act, 15 U.S.C. § 1601 et seq., and Regulation Z, 12 C.F.R. § 226.

8. The Truth in Lending Act requires that state regulations governing the types of transactions regulated by Truth in Lending be consistent with federal law.

9. The Rosenthal Fair Debt Collection Practices Act, Cal. Civil Code §§ 1788-1788.17, applies to the billing and collection activity of telephone corporations that bill for non-communications related charges on telephone bills.

10. The federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.) and the California Uniform Electronic Transactions Act (Civil Code §§ 1633.1-1633.17) permit legally binding contracts to be formed via electronic communications, including electronic signatures, provided the parties agree to the use of electronic communications to send and receive specified documents.

11. California has a substantial state interest in ensuring that confidential information that telephone subscribers reveal to telephone companies in order to obtain services be kept confidential and not be released to third parties without a subscriber's written consent.

12. The period for public review and comment on the draft decision should be reduced, pursuant to Rule 77.7(f)(9).

## **INTERIM ORDER**

### **IT IS ORDERED** that:

1. The Interim Rules Governing the Inclusion of Non-Communications-Related Charges on Telephone Bills, set forth in Appendix A to this Decision, are hereby adopted and shall apply to telephone corporations operating in California, that choose to provide billing services for non-communications products and services and to billing agents and other persons or corporations that are not public utilities but that are responsible for generating charges ultimately placed on the telephone bills of California subscribers.



2. These Interim Rules shall become effective immediately, and shall remain in effect until further order of the Commission.

3. Any telephone companies that plan to provide billing services for non-communications-related products and services pursuant to their billing and collection tariffs shall, before they begin offering such services to subscribers, revise those tariffs to make them consistent with the consumer protection rules set forth in Appendix A.

4. Order Instituting Rulemaking 00-02-004 shall remain open pending further order.

This interim order is effective today.

Dated July 12, 2001, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners

## **APPENDIX A**

### **INTERIM RULES GOVERNING NON-COMMUNICATIONS-RELATED CHARGES ON TELEPHONE BILLS**

*(See Public Utilities Code Section 2890, as amended  
effective July 1, 2001) \**

*(Note: These interim rules will be included, possibly in a modified form, in the Commission's forthcoming General Order on Rules Governing Telecommunications Consumer Protection. They will be found in Part III of that General Order. Some related provisions from other parts of the forthcoming General Order are included in these Interim Rules.*

#### **A. Scope and Purpose**

The purpose of these rules is to protect consumers from unauthorized charges on their telephone bills, specifically, charges for non-communications-related products and services. Effective July 1, 2001, such charges are no longer barred by statute. These rules are intended to give consumers control over whether to use their telephone bills to pay for non-communications-related products and services; to ensure that consumers have sufficient information to make informed choices about this service and, if they use it, to verify charges on their bills; to provide for prompt and effective recourse if they find unauthorized charges or other billing errors related to non-communications charges on their telephone bills; and to protect the confidentiality of information they provide to telephone companies.

These rules apply to: (1) any telephone corporation, as defined in Public Utilities Code Section 234, operating in California, whether providing landline or wireless telephone service, that chooses to open its telephone billing service to non-communications-related products and services; (2) any billing agent that presents such charges to a California telephone corporation on behalf of another entity; and (3) any vendor of non-communications-related products or services that bills for those products or services on a California subscriber's telephone bill, whether it makes billing arrangements directly with the California billing telephone company or indirectly

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\* Selected statutory references are provided as a guide. Statutory citations are to the Public Utilities Code unless otherwise stated. Inclusion of these references is not intended to suggest that the statutes cited are the sole sources of the Commission's authority to promulgate these rules.

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through billing agents. Business entities in all three categories must comply with the applicable rules in this Part. These rules apply to billing for residential telephone service, business telephone service, and combined or undifferentiated residential/business telephone service.

These rules are intended to be consistent with other consumer protection laws that are or may be applicable to billing for products and services unrelated to telephone service. These laws include state and federal laws governing debt collection activity and consumer credit. The Commission's rules governing non-communications-related charges on telephone bills are not intended to deprive consumers of other remedies available under such laws. While our objective in drafting these rules is to make them consistent with the Truth in Lending Act, in particular, to the extent these rules provide any greater protections than those provided by the Act, we believe they are consistent with and therefore not preempted by the Act.

### **B. Definitions**

#### **Agent**

Any person, company, or entity, other than a billing telephone company:

- (1) that represents or acts on behalf of a billing telephone company, billing agent, or vendor as those terms are defined in these rules; or
- (2) that solicits, promotes, advertises, offers, or bills for, products or services that are billed for on a subscriber's telephone bill or included in the envelope containing any bill for telecommunications services; or
- (3) whose function is to bring about or accept performance of contractual obligations between a consumer and either a billing telephone company or a vendor whose charge for products or services is billed for on a subscriber's telephone bill or included in the envelope containing any bill for telecommunications services.

#### **Basic Service**

A minimum level of telecommunications service that each carrier offering local exchange service is required to provide to all of its residential subscribers who request local exchange service. Also referred to as "basic exchange service." (See D.96-10-066.) Wireless service is not "basic service" unless the wireless service satisfies the definition of basic service provided in D.96-10-066 and subsequent Commission decisions.

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### **Billing Agent**

A company or other business entity that aggregates billing for telephone service providers and/or vendors and submits that billing to a telephone company for inclusion on subscribers' telephone bills, either directly or indirectly through one or more billing aggregators.

*[Comment: Sections 2889.9 and 2890 use the term "billing agent." Billing agents are sometimes referred to as "billing aggregators." The FCC uses the term "clearinghouse" (see FCC Anti-Cramming Best Practices Guidelines).]*

### **Billing Error**

A charge made on a subscriber's telephone bill without proper authorization as required by statute and/or these rules (see definition of "unauthorized charge, below); a charge not identified as required by statute and/or these rules; a charge assessed on subscriber's telephone bill for products or services not accepted by the subscriber, or the subscriber's designee, or not delivered to or provided to the subscriber or the subscriber's designee as authorized; the billing telephone company's failure to mail or deliver a telephone bill to the subscriber's last known address if that address was received by the billing telephone company or the entity responsible for initiating the charge, in writing, at least 20 days before the end of the billing cycle for which the statement was required; a reflection on the subscriber's telephone bill of the billing telephone company's failure to credit properly a payment or other credit issued to the subscriber's account; a computational error or similar error of an accounting nature made by a telephone company or vendor; a reflection on a telephone bill of a charge inconsistent with the terms and conditions of the subscriber's service agreement (whether defined by tariff or by contract) or purchase agreement, whichever is applicable.

### **Billing Telephone Company**

See **Telephone Company**

### **Clear and Conspicuous**

A statement is clear and conspicuous if it is readily understandable and presented in a size, color, contrast, location, and audibility, compared to the other material with which it is presented, that make it readily noticed and understood. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in close proximity to the information

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it modifies and in a manner that makes it as readily noticed and understood as the information it modifies, explains, or clarifies.

### **Commission**

The California Public Utilities Commission.

### **Communications-related charges; Non-communications charges**

Communications-related charges include, but are not limited to, charges for: services tariffed by telephone utilities; services permitting voice and data communications, including charges for installation of equipment and facilities; telecommunications equipment that is connected to a telecommunications network; wireless communications service; Internet access; video service; message service; information service, including pay-per-call service; and cable set top boxes. Any charge that is not communications-related, with the exception of taxes and mandatory charges for public purpose programs, is a non-communications charge.

*[Comment: This list of communications-related charges is derived from Section 2890. The Commission recognizes that new communications-related products and services are being developed at a rapid pace; therefore, this list is not intended to be exclusive.]*

### **Complaint (to a billing telephone company from a subscriber)**

A communication, whether written or verbal, from a subscriber to the subscriber's billing telephone company disputing a charge on that subscriber's telephone bill.

A question about a charge is not necessarily a complaint; however, if the bill provides insufficient information to enable the subscriber to verify the charge, fails to identify clearly the source of the charge, includes incorrect information about the charge or the source of the charge, or in any way falls within the definition of a billing error, the question should be deemed a complaint.

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### **Fraudulent Authorization**

An authorization (written, verbal, or electronic) is fraudulent if it is inauthentic (not given by the subscriber) or was obtained from the subscriber based on false or misleading information.

### **Legal name (of a business entity that is not a telephone company)**

Name of company as registered with the California Secretary of State.

### **Signature**

Signature includes an electronic signature as defined by the Uniform Electronic Transactions Act, Civil Code § 1633.2(h), provided, however, that an oral communication or a recording of an oral communication shall not constitute an electronic signature.

### **Solicitation**

An offer, tentative or otherwise, by a telephone company or agent of a telephone company, or a vendor, to a consumer or consumers, or to the public generally, to provide a product or service for compensation. Proposed sales agreements and contracts are solicitations. Sales pitches of all types are solicitations, and telephone companies' interactions with existing or prospective subscribers to set up new services generally include multiple solicitations. Product- or service-specific advertising and other promotional materials fall within the definition of solicitation, whereas brand-name or image advertising generally would not.

### **Subscriber**

Any individual or business that subscribes to any telecommunications service subject to Commission jurisdiction. For purposes of these rules, "subscriber" also includes individuals who use the subscriber's telecommunications service with the permission of the subscriber of record.

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### **Telephone Company; Billing Telephone Company**

A telephone company is any telephone corporation (as defined in Public Utilities Code § 234) operating within California. This term includes resellers and wireless telephone service providers. A billing telephone company is a telephone company that also provides billing services to any third party, including its own affiliate, or that bills for non-communications-related products and services on its own behalf. Telephone companies are responsible for their agents' compliance with these rules and liable for their agents' violation of these rules.

### **Unauthorized charge**

In the context of billing for non-communications-related products or services on a subscriber's telephone bill, an unauthorized charge is a non-communications-related charge included on a subscriber's bill when the subscriber (1) has not authorized the billing telephone company, directly, to include non-communications-related charges on that subscriber's bill; or (2) has not authorized that particular charge. A charge placed on the subscriber's bill by a person who does not have actual, implied, or apparent authority to place such a charge, and which confers no benefit upon the subscriber, is an unauthorized charge.

### **Vendor**

Any person, company or entity that offers or provides non-communications-related products or services billed on a subscriber's telephone bill. Vendors are responsible for their agents' compliance with Section 2890 and these rules.

#### *[Comments:*

*(1) As used in these rules, "vendor" refers to the entity that makes the sale to a California subscriber, attempts to make the sale, or sets in motion the process of placing a charge on a subscriber's bill. In the Commission's view, "entity responsible for generating a charge" as that term is used in Section 2890, i.e., is synonymous. Some telephone companies have argued, however, that the "entity responsible for generating a charge" could include billing agents. To eliminate this ambiguity, we will use the term "vendor" to refer to entities that set in motion the process of placing a charge on a subscriber's bill, not to billing agents acting as an intermediary between seller and billing telephone company. In the event that a billing entity is responsible for setting the process in motion, i.e., is responsible for generating a charge on behalf of no one but itself, it would be subject to the Commission's jurisdiction as provided by Section 2890, as are*

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*vendors. Note that if a billing telephone company sells non-communications-related products and services directly to subscribers, it is a vendor as well.*

*(2) Vendors are not necessarily public utilities, nor are they necessarily California corporations, though they sell or offer to sell to California subscribers.]*

### **Written; In Writing**

“Written” describes material intended to be read, either in the form of hardcopy (including fax) or transmitted through electronic media. “In writing” similarly describes (1) written material in hardcopy document form, and (2) messages intended to be read that are sent electronically. For purposes of these rules, however, whenever anything is required to be done in writing, the requirement must be satisfied in the form of hardcopy unless the subscriber agrees to having the required information (disclosure, notice, confirmation etc.) provided electronically.

*[Comment: This definition of “Written; In Writing” will be interpreted consistent with the provisions of the Uniform Electronic Transactions Act, Cal. Civil Code §§ 1633 et seq., and with the Electronic Signatures Act, 15 USCA §§ 7001 et. seq., subject to the limitation on the definition of “signature” as defined in these rules.]*

### **C. Authorization Requirements**

**Effective July 1, 2001, non-communications-related charges may be included in a subscriber’s telephone bill, provided both of the following conditions pertaining to authorization have been satisfied: (1) the subscriber has affirmatively “opted in”, i.e., provided a general one-time authorization directly to the billing telephone company to open up the subscriber’s account to non-communications charges; AND (2) the subscriber has authorized the specific charge placed on the account. Each of these authorization requirements is described in more detail below.**

**(1) General (“opt-in”) authorization: The billing telephone company may place non-communications charges on a subscriber’s account only if it has first obtained express written authorization, directly from the subscriber, to include non-communications charges on that subscriber’s telephone bill, and the subscriber has not revoked that authorization. The billing telephone company must use a PIN number or other equally reliable security procedure designed to prevent anyone other than the subscriber and individuals authorized by the subscriber from placing charges on the subscriber’s account. Opt-in authorization information or confirmation, including any assigned or**



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**confirmed PIN, must be sent to the subscriber's billing address even if the authorization lists a different address for delivery of products or services.**

*[Comment: Because billing for non-communications-related charges on telephone bills was previously prohibited by law, many subscribers initially will be unaware that they are now exposed to a new risk of having unauthorized charges for non-communications-related products or services improperly placed in their telephone bills. The Legislature has acknowledged that additional safeguards are necessary to protect consumers from the risk of being "crammed" with charges that are unrelated to telephone service or other communications services. (See Stats 2000, ch 931 (AB 994).) Consumers should not be exposed to this risk unknowingly.]*

*Accordingly, these interim rules require billing telephone companies to obtain express permission from a subscriber to include non-communications-related charges before any non-communications-related charges may be included on that subscriber's bill.*

**(a) In obtaining authorization to bill for non-communications charges, billing telephone companies must disclose in a clear and conspicuous manner all material terms and conditions related to this service. Material terms and conditions include any applicable fees and charges, including late payment penalties and interest; any available options for limiting authorization (for example, to a dollar amount per month); how a subscriber may dispute a charge; the fact that the billing telephone company may not terminate basic local service, file an adverse credit report, or charge interest or finance charges on disputed amounts; how a subscriber may revoke authorization; and how a subscriber's confidential information is protected.**

*[Comments:*

*(1) Billing telephone companies may create forms for obtaining subscribers' authorization, although written authorization may be provided in other ways.*

*(2) Regardless of the manner in which written permission is given, billing telephone companies must provide sufficient information to enable consumers to make informed decisions about whether to allow non-communications charges on their telephone bills, and must abide by those decisions. (See § 2896.) They must disclose all material terms and conditions, and must not mislead subscribers in an effort to convince them to authorize the use of their telephone bill for non-communications-related charges. (See Id. and Business and Professions Code § 17500.) Companies that do so will be subject to sanctions by the Commission for violating the Public Utilities Code and these rules. Such practices may also lead to court-ordered penalties pursuant to California's Unfair Competition Law (Business and Professions Code §§ 17200 and 17500).*

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*(3) If a subscriber disputes a charge on the ground that the subscriber had not authorized the billing telephone company to include non-communication-related charges on the subscriber's bill, the billing telephone company bears the burden of proving that the subscriber did in fact provide such authorization.]*

**(2) Point-of-sale authorization: Only charges that the subscriber has specifically authorized may be included on the subscriber's bill. Authorization must be provided by use of PIN number or other equally reliable security procedure.**

*[Comments:*

*(1) The primary goal of Sections 2889.9 and 2890 and of these rules is to ensure that only authorized charges are billed to subscribers, i.e., to deter "cramming." Billing telephone companies, billing agents, and vendors all are responsible for ensuring that only authorized charges are billed.*

*(2) Requiring PIN number authorization is one way to ensure that a purchase is properly authorized at the point of sale. As commenters pointed out in response to the first draft of these rules, however, better methods of ensuring proper authorization may exist or may be developed in the future. Accordingly, these rules allow flexibility in the means used to ensure authorization. Whatever the security procedure used, it should be at least as reliable as a PIN number, however. In the event a subscriber claims that a charge was unauthorized, the billing telephone company may not require the subscriber to pay the charge until the billing telephone company has obtained proof of proper authorization from the vendor or from the billing agent that submitted the charge for billing.*

*(3) This type of authorization will be referred to as "point-of sale authorization" to distinguish it from general authorization to include non-communications charges on a subscriber's telephone bill (see Rule C(1)).]*

**(3) Subscribers may not be held liable for unauthorized charges. Subscribers must make a reasonable, good-faith effort to notify the billing telephone company promptly when the subscriber becomes aware of a probability of unauthorized use of the subscriber's account. If the billing telephone company is unable to verify authorization, a charge is deemed unauthorized.**

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*[Comment: Section 2890 provides that a telephone bill “may only contain charges for products or services, the purchase of which the subscriber has authorized.” This provision mandates a “zero-liability” rule for unauthorized charges.]*

### D. Revocation of Opt-in Authorization

**(1) By subscriber:** Subscribers may revoke authorization to allow non-communications charges on their bills at any time without charge. They may do so by notifying their billing telephone company, by telephone, in writing, or via the Internet, that they no longer wish to allow non-communications charges on their telephone bill. The billing telephone company must confirm the revocation in writing within 10 business days. This written confirmation shall indicate the date and time the subscriber notified the billing telephone company that authorization was revoked. Billing telephone companies must allow subscribers to revoke authorization by telephone 7 days a week, 24 hours a day. The right to revoke authorization to allow charges includes charges from standing authorizations previously made by the subscriber, such as charges for monthly dues or subscription service. This right is in addition to any other right that the subscriber may have to cancel the transaction that gave rise to the billing charge.

*[Comment: As with credit cards, the consumer must be able to revoke authorization at any time to protect the subscriber in the event of attempted fraudulent use of the subscriber’s account. As subscribers cannot be held liable for unauthorized charges, this provision protects the billing telephone company as well.]*

**(2) By billing telephone company:** A billing telephone company may suspend a subscriber’s authorization to bill for non-communications charges without prior notice if the company has reason to suspect fraudulent or unauthorized use of the subscriber’s account. The billing telephone company shall give prompt notice to the subscriber of such action. In all other cases, a billing telephone company must provide reasonable notice before suspending or revoking the subscriber’s authorization. Billing telephone companies must inform subscribers of their revocation policies when soliciting subscribers’ authorization and when responding to subscribers’ requests for information about the billing service.

**(3) Any agreement by a subscriber not to revoke an authorization is contrary to public policy and of no effect.**

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### **E. Billing Telephone Companies' Obligations to Screen and Monitor Entities for Whom They Bill**

- (1) Billing telephone companies must take reasonable precautions to screen vendors and billing agents before agreeing to provide billing services for them, in order to screen out unreliable or untrustworthy business entities.**
- (2) Before providing billing services to any vendor or billing agent, billing telephone companies must require and obtain from the vendor or billing agent the following information:**
  - (a) If the company is a corporation or other type of business entity required to file with the State of California (Secretary of State or other state agency) as a domestic or foreign corporation, its legal name as registered with the State of California, and if doing business under a different name in California, its fictitious name as registered in each county in California in which it is doing business under that fictitious name.**
  - (b) If the company is not a corporation or other type of business entity required to register with the State of California (Secretary of State or other state agency), but is doing business under a fictitious name, its fictitious name as registered in each county in California in which it is doing business under the fictitious name. Billing telephone companies must provide this information to the Commission and the California Attorney General upon request.**
- (3) Contracts to provide billing services for vendors and billing agents must provide that the billing telephone company will require proof of authorization for all charges disputed by subscribers, including but not limited to the nature, time, place and fact of the authorization; the nature, qualities and price of the product or service; and other charges of any and every kind, such as taxes, charges for other products and services, shipping expenses, interest, and penalties; and the legal basis for any such charge, and that without such proof, the subscriber will be credited for the charge and the corresponding amount withheld from the vendor or billing agent. Billing telephone companies may impose fees on these vendors and billing agents for the cost of investigating and resolving subscriber complaints.**
- (4) Billing telephone companies must monitor the performance of the vendors and billing agents for whom they provide billing services, promptly investigate subscribers' complaints, whether written or verbal, of**

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**unauthorized charges and other billing errors, and promptly suspend billing on behalf of a vendor or billing agent whose charges are generating a significant percentage of complaints (over five percent in two out of three consecutive months), or if the billing company has any other reason to believe unauthorized billings are being presented to it. A billing telephone company may resume billing for a vendor or billing agent after investigating the alleged billing errors, if it has determined that the problem(s) underlying the errors have been resolved.**

*[Comment on what constitutes a “significant percentage” of complaints: The Federal Trade Commission has defined “excessive consumer dispute chargebacks” in the credit card context as chargebacks that exceed three percent of all credit card transactions for any single company for two out of three consecutive months. See In re Citicorp Credit Services, Inc. (1993), FTC No. C-3413, 116 F.T.C. 87, 1993 Lexis 19 (holding that failure to investigate excessive chargebacks and terminate billing when excessive chargebacks occur constitutes an unfair business practice in violation of the Federal Trade Commission Act.)]*

**(5) Billing telephone companies must keep records of all subscriber complaints, both written and verbal, of unauthorized non-communications charges and other billing errors related to those charges for at least four years, and be able to categorize those complaints by vendor and by billing agent. Billing telephone companies will make this complaint information available to Commission staff or the California Attorney General upon request.**

*[Comment: As a further deterrent to cramming, billing telephone companies are encouraged to consider including escalating fee provisions in their contracts with billing agents and vendors, so that those vendors whose charges generate a large number of complaints quickly suffer financial consequences. The purpose of such provisions is to make cramming unprofitable for vendors and billing agents, thereby eliminating the incentive to engage in the practice and reducing the harm to consumers, as well as the number of complaints addressed to billing telephone companies and the Commission.]*

**(6) The Rosenthal Fair Debt Collection Practices Act, Sections 1788-1788.17 of the California Civil Code, applies to the billing and collection activity of telephone corporations subject to these rules. Insofar as these rules require action inconsistent with an explicit requirement of that Act, that Act shall apply.**

### **F. No Disconnection of Basic Telephone Service for Nonpayment of**

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### Non-communications Charges

**Billing telephone companies that provide basic local exchange service may not disconnect or suspend a subscriber's basic service for failure to pay any non-communications charge on the subscriber's telephone bill. Billing telephone companies must give subscribers notice of this rule when requesting initial authorization and on every bill that contains non-communication-related charges.**

*[Comment: See definition of basic service and § 779.2.]*

**(1) When discussing non-payment of charges with subscribers, orally or in writing, billing telephone companies must inform them of this rule in a clear and conspicuous manner.**

**(2) Billing telephone companies and their agents, as well as billing agents, vendors, and their agents, including assignees of accounts receivables, may not tell subscribers or lead them to believe that subscribers' basic local exchange service may be disconnected for failure to pay for non-communications charges.**

**(3) Unless otherwise directed by the subscriber at the time the payment is made, billing telephone companies shall credit partial payment amounts in the following order: (1) local exchange telephone service and associated mandatory fees and taxes; (2) other communications-related charges; (3) other charges.**

### G. Complaint Procedures

**(1) The billing telephone company is responsible for ensuring that subscriber complaints about non-communication charges on its bills are processed as required by these rules. Subscriber questions and complaints concerning non-communications-related charges should be addressed to the billing telephone company, or to its agent, as designated on the bill. The telephone bill must include a prominently displayed toll-free customer service number for this purpose. The toll-free number must be adequately staffed by personnel with sufficient training and authority to answer questions, investigate complaints, and adjust bills in favor of subscribers when appropriate.**

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**Telephone companies are required to provide adequate customer service as a telecommunications provider (see the Telecommunications Customer Service Act of 1993, codified at Sections 2895-2897). They must ensure that the additional customer service required of them in connection with non-communications charges does not negatively impact telephone customer service.**

**(2) Billing telephone companies or their agents shall promptly investigate subscribers' complaints of billing errors. Within 30 days of receiving a complaint of a billing error unrelated to the subscriber's telephone service, the billing telephone company must either credit the disputed charge to the customer or acknowledge, in writing, receipt of the complaint, and must verify the validity of the charge. Billing telephone companies must resolve such complaints within 60 days.**

*[Comment: These rules are meant to be consistent both with Section 2890 and with federal regulations governing credit card transactions, which may be applicable as well in some cases. See 15 U.S.C. 1666(a)(3)(A),(B) and 12 C.F.R. 226.13(c)(1),(2).]*

**(3) While the investigation is pending, the subscriber shall not be required to pay the disputed charge, no late charges or penalties may be applied, the charge may not be sent to collection, and no adverse credit report may be made based on non-payment of that charge.**

**(4) The billing telephone company or, if the vendor is handling the complaint, the vendor, will notify the subscriber in writing of the result of its investigation. If the vendor has failed to provide proof of authorization within the time allowed, the billing telephone company will credit the charge to the subscriber. If the billing telephone company has obtained proof of authorization within the time allowed, it may require payment of the charge within 30 days of sending written notice to the subscriber. The notice shall state the reason for the creditor's belief that the billing error alleged by the subscriber is incorrect and include the amount due and the date of payment. If, however, the subscriber alleges that the authorization provided was fraudulent, or the billing telephone company has reason to believe it was fraudulent based on other information, the billing telephone company has an obligation to investigate further. An authorization is fraudulent if it is inauthentic (not given by the subscriber) or obtained from the subscriber based on false or misleading information. Consumers must be given copies of evidence to support the billing telephone companies' allegations that charges are authorized if the consumer so requests. Consumers who request such**

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**evidence will be given a time period equal to one billing cycle or ten days, whichever is less, to determine if the evidence is authentic and to offer other evidence, by oral statements or otherwise, that would show the purchase was not authorized by the subscriber.**

**(5) If the subscriber alleges that a non-communications charge is improper because the subscriber had not “opted in,” i.e., consented to the inclusion of non-communications charges on the telephone bill (see Rule C(1)), or had revoked such authorization, the billing telephone company bears the burden of proving that it had a valid general authorization from the subscriber at the time the particular charge was authorized.**

**(6) A subscriber dissatisfied with the billing telephone company’s resolution of the complaint may file an informal complaint with the Commission’s Consumer Affairs Branch (CAB). Consumers who believe they have been crammed may also notify other agencies such as the District Attorney’s Office in their county or the Attorney General’s Office.**

**(7) Pending CAB’s investigation, the subscriber’s obligation to pay the disputed charge is stayed, provided that the subscriber’s complaint was filed with CAB within 30 days from the date the billing telephone company notified the subscriber of its decision in writing.**

**(8) If CAB obtains proof of proper authorization, CAB will so inform the subscriber and the billing telephone company in writing. Within 30 days of such a notice, the subscriber must pay the disputed charge if it has not been paid. If the subscriber believes CAB’s conclusion was in error, the subscriber may file a formal complaint with the Commission. The filing of a formal complaint does not, however, stay the subscriber’s obligation to pay the disputed charge.**

**(9) If CAB is unable to obtain proof of proper authorization, it will ask the billing telephone company, in writing, to remove the charge. If the billing telephone company fails to remove the charge, the subscriber may file a formal complaint with the Commission. CAB may refer the case to the Commission’s Consumer Services Division or to other law enforcement agencies for further investigation.**

**(10) A billing telephone company shall credit a payment to the subscriber’s account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge. If a billing telephone company fails to credit payment as required in this rule, in time to avoid the imposition of finance or other charges, the billing telephone company shall adjust the**



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**subscriber's account so that the charges imposed are credited to the subscriber's account during the next billing cycle.**

**(11) When a positive balance in excess of \$1 is credited on a telecommunications account (through transmittal of funds to the billing telephone company in excess of the total balance due on an account, through rebates of unearned charges, or through amounts otherwise owed to or held for the benefit of a subscriber) the billing telephone company shall: Credit the amount of the credit balance to the subscriber's account; refund any part of the remaining credit balance within seven business days from receipt of a written request from the subscriber; and make a good faith effort to refund to the subscriber by cash, check, or money order, or credit to a deposit account of the subscriber, any part of the credit balance remaining in the account for more than six months. No further action is required if the subscriber's current location is not known to the billing telephone company and cannot be traced through the subscriber's last known address or telephone number.**

**(12) When an entity other than the billing telephone company accepts the return of property or forgives a debt for services, and agrees to credit the subscriber's telephone bill, the entity shall, within seven business days from accepting the return or forgiving the debt, transmit a credit statement to the billing telephone company through normal channels for billing statements. The billing telephone company shall, within 3 business days from receipt of a credit statement, credit the subscriber's account with the amount of the refund.**

**(13) Nothing in these rules precludes a subscriber that has been the victim of cramming, misleading advertising, or other unfair business practice from pursuing other legal remedies and obtaining relief that the subscriber may be entitled to under state or federal law.**

### **H. Bill Format**

**(1) Telephone bills containing non-communications charges must be clearly organized, readily understandable, and provide sufficient information to enable subscribers to verify whether the charges they were billed for are the charges they authorized. They must satisfy all of the applicable requirements set forth in Sections 2889.9 and 2890.**

**(2) Non-communications charges must be placed in one or more separate sections of the telephone bill clearly labeled "Non-communications-related charges," separate from the charges for telecommunications services. The**

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**name of the vendor and billing agent associated with each charge must be clearly identified.**

**(a) Upon request, billing telephone companies shall provide Commission staff and the Attorney General with information about the types of non-communications-related products and services they bill, and the names of the vendors and billing agents on whose behalf they bill for these charges. Billing telephone companies shall require the vendors on whose behalf they bill, either directly or indirectly through billing agents, to provide the necessary information.**

**(3) Each bill must provide a clear, concise, non-misleading description of the product or service for which a charge has been imposed. The description of the product or service must be sufficiently clear and specific to enable subscribers to determine whether the products or services for which they are being billed are the products or services that they have requested and received.**

**(4) If the telephone bill includes charges for local exchange service, the section of the bill containing non-communications charges must include a notice that states:**

**“The telephone company is not allowed to disconnect your basic local service for failure to pay this portion of your bill. It may, however, take steps other than disconnection, as permitted by law, to collect legitimate charges.”**

### **I. Confidential Subscriber Information**

**Billing telephone companies may not release confidential subscriber information, credit or financial information, or any other confidential information about a subscriber, including information about a subscriber’s spending patterns, to their affiliates or to other third parties, without the subscriber’s informed, written consent, with the following exceptions:**

**Confidential information may be released: (1) to affiliates of the billing telephone company, or to others, to the extent necessary to provide and bill for telecommunication services; (2) to a law enforcement agency or other public agency for the purpose of responding to an emergency (“911”); (3) to law enforcement personnel in possession of a valid search warrant for the information sought; (4) if required to turn over such information by a court order; or (5) if otherwise required by law. In addition, information about unpaid charges may be released to a collection agency for the purpose of**

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**collecting a debt, subject to the requirements of Rule G (Complaint procedures) and all applicable laws.**

*[Comment: See §§ 2891- 2891.1, and 47 U.S.C. § 222.]*

### J. Penalties

**The Commission may impose fines and other penalties on billing telephone companies, billing agents, and vendors that fail to comply with these rules. Nothing in these rules, however, precludes district attorneys, the Attorney General, or other law enforcement agencies from obtaining injunctive relief, civil penalties, and other relief permitted by law against a billing telephone company, billing agent, or vendor that engages in business practices that violate these rules. The Commission will make relevant complaint data and investigation reports available the Attorney General and to district attorneys who are investigating possible consumer fraud.**

*[Comments:*

*(1) On the Commission's authority to impose penalties on billing agents and vendors, see §§ 2889.9- 2890.*

*(2) Government Code § 26509 requires the Commission to give district attorneys access to complaints against, and the Commission's investigation of, a person being investigated by a district attorney regarding possible consumer fraud.]*

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**(END OF APPENDIX A)**